

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In Re Flint Water Cases,

No. 5:16-cv-10444-JEL-MKM
(consolidated)

Hon. Judith E. Levy

Mag. Mona K. Majzoub

**DECLARATION OF MARK R. CUKER, ESQ., IN SUPPORT
OF CHAPMAN PLAINTIFFS' MOTION TO REVIEW AND
RESPOND TO HOURLY BILLING CAN COSTS; AND
FOR DISCOVERY OF BONE SCAN INFORMATION**

Pursuant to 28 U.S.C. § 1746, I, Mark R. Cuker declare as follows:

1. Attached as Exhibit A Transcript of Status Conference of February 24, 2021
2. Attached as Exhibit B is Transcript of Settlement Counsel Meeting of March 2, 2021.
3. Attached as Exhibit C is Transcript of October 15, 2020, Deposition of Aaron Specht. (filed under seal).

4. Attached as Exhibit D is a March 15, 2021 email exchange between Meghan Holmes, Associate General Counsel for Thermo Fisher Scientific Inc. and Attorney Val Washington.

I declare, under penalty of perjury, that the foregoing is true and correct.

Executed on April 23, 2021, Philadelphia. PA.

/s/ Mark R. Cuker
MARK R. CUKER

Exhibit “A”

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In Re: FLINT WATER CASES Case No. 16-10444

_____ /

STATUS CONFERENCE
BEFORE THE HONORABLE JUDITH E. LEVY
UNITED STATES DISTRICT JUDGE
and
THE HONORABLE JOSEPH J. FARAH
GENESEE COUNTY CIRCUIT COURT JUDGE
Virtual Hearing Via Zoom - Wednesday, February 24, 2021

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1 Wednesday, February 24, 2021

2 2:05 p.m.

3 -- --- --

4 THE CLERK OF THE COURT: The United States District
5 Court for the Eastern District of Michigan is now in session.
6 The Honorable Judith E. Levy presiding, joined by the Honorable
7 Joseph J. Farah of Genesee County Circuit Court. Calling the
8 Flint Water cases.

9 JUDGE LEVY: All right. Well, welcome, everyone.
10 And welcome, Judge Farah.

11 JUDGE FARAH: Thank you, Judge Levy.

12 JUDGE LEVY: It's good to see you.

13 JUDGE FARAH: You, too.

14 JUDGE LEVY: And Judge Farah's law clerk, Samantha
15 Weinstein, has moved on to another job in California. So we
16 regret that she's not here with us.

17 But it's great to see you, Judge Farah.

18 JUDGE FARAH: Thank you.

19 JUDGE LEVY: And does every- -- there's still one
20 individual here who who's named "Counsel with Panelist
21 Permission." If everybody could turn their ...

22 If you could, please turn your cameras on. Then we'll
23 know who everyone is and we'll be able to tell ..

24 MR. STERN: So, Judge, earlier today on behalf of
25 Mr. Cuker I sent an E-mail to Ms. Calhoun and there were two

1 lawyers. There was Mr. Cuker and then there was a Mr. Bened --

2 MR. BENEDETTO: Benedetto. Good afternoon, Your
3 Honor. I am present. I will just be observing. I will shut
4 my camera off and I'll mute my audio.

5 JUDGE LEVY: Who are you? I didn't hear who you said
6 you are.

7 MR. BENEDETTO: This is Conrad Benedetto. I'm an
8 attorney in Philadelphia, Pennsylvania.

9 JUDGE LEVY: Mr. Benedetto, have you filed an
10 appearance in the case?

11 MR. BENEDETTO: Yes, Your Honor.

12 JUDGE LEVY: Okay, terrific. But could you still,
13 please, change the name on the pane.

14 What you do is you take your cursor and you do the
15 right click. Or if you're on a Mac you probably click on the
16 something and it will say "rename".

17 (No response.)

18 JUDGE LEVY: Okay. We'll do it for you.

19 MR. BENEDETTO: Yeah. You're talking to a computer
20 idiot, Your Honor. I apologize.

21 JUDGE LEVY: I think I've discerned that. That's
22 okay. That's okay. We all have different strengths that we
23 bring to all our endeavors.

24 We still have other people with that identity and it's
25 important for us to know who is present. Because inevitably,

1 individuals who are not planning to speak do speak and we just
2 need a record. We're just a court of public record. So we
3 record what we do and we might just have to remove people who
4 we're not able to identify.

5 MR. STERN: Mr. Benedetto, before you put your name in
6 your box it said "Panelist with Counsel Permission" or "Counsel
7 with Panelist Permission" and there's two other individuals, it
8 looks like, with that designation in their box. Are there
9 other lawyers from your firm that have logged in?

10 MR. BENEDETTO: Not that I'm aware of.

11 JUDGE LEVY: We'll just remove those people.

12 (A brief discussion was held off the record.)

13 JUDGE LEVY: So we're now on the record. And we are
14 trying to make sure the record reflects those who are actually
15 participating as counsel in this case. And there's one
16 individual whose video is turned off and microphone is turned
17 off and they were given the initial name "Counsel with Panelist
18 Permission," and they've elected not to -- they're apparently
19 not listening or don't know how to use the computer at all. So
20 they are not following the Court's request which is to unmute
21 and turn the video on so we know who it is. So the record
22 won't reflect they're here and, apparently, they probably
23 aren't here. So I'm going to ask my law clerk to remove that
24 person from the hearing.

25 And then we've got Mr. Wise who we know is counsel in

1 this case and, apparently, he's not present either or his
2 microphone and his camera won't work. So there's no point in
3 him participating either. So we're going to remove Mr. Wise.

4 There, wait. He just turned his microphone on.

5 Mr. Wise?

6 MR. WISE: (No response.)

7 JUDGE LEVY: All right. Well, something's not working
8 and we all have those days where our computers don't work. So
9 we'll assume that is what is going on with Mr. Wise.

10 So thank you all for participating in this effort to
11 figure out who is here. We are continually trying to modify
12 our Zoom protocols so that we can be as absolutely productive
13 as we can possibly be. So we'll just keep working on it.

14 MR. STERN: Judge Levy?

15 JUDGE LEVY: Yes?

16 MR. STERN: Susan Smith has sent me a note that she is
17 the 443 phone number.

18 JUDGE LEVY: Oh, good.

19 MR. STERN: She's muted. But she's here and she's
20 identified herself as that.

21 JUDGE LEVY: Okay. But does she want to be in the
22 hearing?

23 MR. STERN: I believe she does. She's muted right now
24 and cannot unmute. But that's how she is logged in, I guess,
25 is by phone.

1 JUDGE LEVY: Okay.

2 MR. STERN: So, yes. She just said yes. So she hears
3 you.

4 JUDGE LEVY: Yeah. So, Leslie, let's add Ms. Smith.

5 (Ms. Smith added to Zoom hearing.)

6 JUDGE LEVY: Thank you.

7 Okay. Well, now let's get on with the business of the
8 day.

9 I want to officially welcome Judge Farah again to the
10 hearing. And some counsel on our hearing have been through
11 quite a bit with the weather in Texas and I just want to
12 express that throughout I had those who I know in Texas,
13 including those counsel on my mind, and was always concerned
14 and I'm just glad to see that everything is at least coming
15 back to normal somewhat in the state and that you're safe and
16 healthy.

17 So, again, the recording is prohibited of this and
18 that includes screenshots and so on that would be submitted to
19 the press or anything else. So all video, audio or the still
20 photos and screenshots are prohibited.

21 So let's move to the agenda. And the first item on
22 the agenda related to clarification requests I received from
23 the VNA defendants regarding motions for summary judgment in
24 the bellwether cases. And we had a pre-meeting, what I call
25 it, in chambers earlier today. And this is just a sort of

1 procedural issue to make sure that when the motions are filed,
2 the short form complaints match up with the counts in the long
3 form complaints. But we got that resolved and I think we know
4 how to proceed with that and there wouldn't be any need for
5 further clarification.

6 In terms of the second item, VNA had also requested
7 some discussion and resolution of another case management sort
8 of issue which is that there were a good number of motions to
9 dismiss based on statute of limitation issues related to the
10 adult plaintiffs in a number of cases that Mr. Shkolnik had
11 filed.

12 That issue got resolved but there are still minors in
13 those cases that were not impacted by the resolution of the
14 statute of limitations issues. So there are two groups of
15 minors. Some are going to have the complaints answered and
16 others are going to be subject to further motions to dismiss
17 that do not involve the statute of limitations. So I have
18 requested that there simply be a stipulated order submitted
19 regarding when the answers can be prepared in those cases so
20 we'll know when to expect them as well as when the motions to
21 dismiss for the remaining minors would be filed. So that's
22 good to have resolved. So thank you for working on that.

23 MR. CAMPBELL: Your Honor, this is James Campbell.

24 JUDGE LEVY: Sure.

25 MR. CAMPBELL: Just a very brief point of

1 clarification there. The motions to dismiss have already been
2 filed. They're on file with the courts.

3 JUDGE LEVY: Oh.

4 MR. CAMPBELL: I think, perhaps, I can volunteer to
5 identify those plaintiff names and those pending motions just
6 so Your Honor is aware of them.

7 JUDGE LEVY: That would be good.

8 MR. CAMPBELL: And, again, there's no issue with the
9 decision. We just wanted a point of clarity and we'll also
10 identify and submit a stipulation for the plaintiffs that
11 require an answer.

12 Thank you very much, Your Honor.

13 JUDGE LEVY: Okay.

14 MR. SHKOLNIK: Your Honor, if I can just -- this is
15 Hunter Shkolnik again. Mr. Wise is on and he is having audio
16 problems.

17 JUDGE LEVY: Oh.

18 MR. SHKOLNIK: He couldn't get through. I just wanted
19 to let you know that.

20 JUDGE LEVY: Thank you.

21 Sorry, Mr. Wise, if I was being harsh.

22 Okay. So then we had the issue, the third item on the
23 agenda relates to progress on the second round of bellwether
24 plaintiffs and their selection. And the 100 individuals --
25 it's now at 100 individuals who are completing fact sheets at

1 this time and remaining dates will be triggered upon the
2 completion of that process.

3 Do I have that correct, Mr. Campbell?

4 MR. CAMPBELL: Yes, Your Honor. Thank you very
5 much.

6 MR. ERICKSON: Your Honor, this is Philip Erickson. I
7 just want to mention with regard to agenda item number two,
8 that we're similarly situated with VNA and we'll be working
9 with Mr. Shkolnik to come up with an understanding as to when
10 our answers will be due in approximately 30 cases.

11 JUDGE LEVY: Thank you. Thank you.

12 And since you're there, Mr. Erickson, the fourth
13 agenda item was submitted by LAN and it was seeking
14 clarification on the length of the corporate deposition that's
15 coming up, 30(b)(6) deposition. We did have some discussion in
16 the chambers conference. Partly, I do that because I want to
17 be a little more prepared for what the issues are than just an
18 item on an agenda, a proposal that's submitted. And we had an
19 opportunity to pretty much run through this, that I don't think
20 needs to be repeated. But it was determined that the previous
21 ruling that I think was primarily issued by Judge Farah, that
22 there would be 20 hours on the record at this 30(b)(6)
23 deposition. Of those 20 hours on the record, one and a half
24 will be reserved for counsel who did not notice the deposition.
25 And if they also don't use that time, then it will revert to

1 those who did notice the deposition.

2 Also, LAN is producing two individuals to respond to
3 the 30(b)(6) deposition. So all of this has to be coordinated
4 over the course of the two different witnesses.

5 Is there anything further that's needed to clarify
6 that?

7 MR. ERICKSON: Not from our perspective, Your Honor.
8 And thank you for the clarification to both Judge Farah and
9 yourself.

10 JUDGE LEVY: Okay. And I do want to say to everybody
11 I realize that these depositions are long. They're stressful
12 to prepare for. They're stressful to be the witness or the
13 lawyer defending and preparing the witness for the deposition.
14 So I am sympathetic to that and I think an enormous amount of
15 work has been accomplished in this case over the course of all
16 of these depositions and I just ask everybody to hang in there
17 and be patient with one another and with your witnesses, of
18 course.

19 So we're now up to a report from Ms. Greenspan, who I
20 have to thank again for her enormous contribution to this case
21 without whom we just all wouldn't be here. Because she just
22 helps us all problem solve and troubleshoot.

23 So, thank you.

24 MS. GREENSPAN: Thank you, Your Honor.

25 Yeah, I have a couple of items to report on today.

1 I'm going to start with the -- what I normally give, an update
2 on the submissions to the census to kind of give a flavor to
3 everybody of what's been going on over the last month or so.

4 We continue to get new submissions. We got 430 new
5 claims and 700 updates in the last couple of weeks. We have
6 provided to the lawyers information about what we call
7 duplicate claims. They're duplicate retentions. They're
8 individuals who have -- who are identified by lawyers -- by
9 different law firms as being their retained clients. So we
10 have multiple instances of that and we've sent out three
11 separate updates on these duplicate retentions on January 23rd,
12 February 5th and February 19th. And there's about 3,000
13 individuals involved in these different, you know, what I'm
14 going to call duplicate retentions.

15 So I know that lawyers are in the process of having
16 discussions about how to resolve some of these, some of them
17 will get resolved in the near future and some of them are going
18 to take longer to resolve. But that is a process that is
19 somewhat underway.

20 In terms of the total number of people identified,
21 individuals identified in the census data, we are at about
22 26,692. That is after we account for the duplicate questions.
23 So it's about where we were last time I gave a report. Because
24 some have been withdrawn and some have been added and it sort
25 of balanced out.

1 Of those, I have about 10,784 that are children,
2 minors. And I'm defining minors based on a date of birth after
3 April 25th, 1996. So these are minors that would be -- they
4 would have been minors at the time of the initial water switch.
5 But they are -- many of them are not minors today. So it's
6 just to be clear on what that definition is.

7 But in addition to the census information, as
8 everybody knows, the process for registering for the settlement
9 commenced on January 27th. So I have a couple of updates on
10 that process and a couple of updates on the notice process.

11 So let me start with notice. Notice was mailed out to
12 households in Flint starting on Friday, February 19th and it
13 was completed on Monday, February 22nd. So the notices have
14 all been distributed to the addresses that were made available
15 to the notice administrator. There are 57,402 packages that
16 were mailed out. So people should be receiving them this week,
17 I assume. And maybe some people have already received their
18 packages.

19 If people need, you know, more forms or more copies of
20 the notice package, there are a couple of places to contact to
21 get that information. I can state it right now on the record
22 But perhaps there would be other places where this information
23 is easily accessible.

24 So, first of all, there is a telephone number, an 800
25 number. It's 800-493-1734. There is a website: Official,

1 Flint, Water, Settlement, dot com. That may be the easiest way
2 for people to start to get information because that website has
3 information on it and it also has contact information. So
4 people can request forms or find out how to request forms or
5 look at the frequently asked questions section and they can
6 also online register for the settlement, if they so desire. So
7 those are two ways to go ahead and get more forms or more
8 documents. Again, it's OfficialFlintWaterSettlement.com.

9 And I think some people may need to get additional
10 forms. The package will only contain one registration form.
11 But, of course, you can go online to fill out your registration
12 or you can request additional forms to get them filled out and
13 submit them in hard copy.

14 What I want to talk about next is just a registration
15 status. So as of Monday evening, so that is the day before
16 yesterday, we had identified 15,568 unique registrants. There
17 may be some people who registered more than once but in terms
18 of -- after accounting for that, the unique registrants,
19 15,568. Of those 11,641 are adults and 2,295 are minors. This
20 is a different definition of minors than the one I used in
21 describing the census data. This is a minor as of now,
22 basically. So as of the time they filed the registration.

23 And then there are 1,632 people who didn't provide a
24 date of birth. So we do not know who they are. We don't know
25 if they are adults or minors.

1 But I want to note that this is the number of
2 registrations received before the notice packages have actually
3 been received by people in the community. So now that these
4 notice packages are out and people have them, I would expect
5 that there would be an uptick in the registration process.

6 I'll stop there in case there are any questions, Your
7 Honor, if you wanted to raise anything.

8 JUDGE LEVY: Are there -- no. I don't have any
9 questions. The registration period will last until Monday,
10 March 29th. So that's a date for any lawyers who are on the
11 call considering assisting their client to register or anyone
12 who is listening to the call. It's an important date to be
13 aware of.

14 MS. GREENSPAN: Your Honor, I do have something else
15 to add to make clear to people who are participating in this
16 hearing. The registration materials note certain kinds of
17 documents that people should be submitting. For example, if
18 you are a next friend, a parent of a minor child, there is a
19 reference to submission of documents to identify yourself.

20 But those are not being required at this stage in the
21 process. So if people go ahead and register, they will have to
22 supplement and provide those documents, but they don't have to
23 do it in order to have the registration counted as timely.

24 So I just wanted to make that clear.

25 JUDGE LEVY: Okay.

1 MS. GREENSPAN: And I believe that the claims
2 administrator will be posting some information about that to
3 clarify in case people are worried that they won't be timely
4 because they haven't been able to get those documents. So just
5 to clarify, the registration will still be considered timely
6 and you'll have to supplement later with the appropriate
7 documents.

8 JUDGE LEVY: That's helpful. Thank you.

9 I want to bring up a few other things related to the
10 settlement process. And one is that I learned in our earlier
11 meeting that counsel who are currently preparing their attorney
12 fee requests need some additional time. It was to be submitted
13 this Friday and instead will be submitted on Monday, March 8th.
14 And there will be a stipulation submitted so that is reflected
15 on the docket of the case.

16 I want to also let those who are present know that the
17 issue that had been brought to the Court's attention regarding
18 Attorney Loyst Fletcher has been resolved. He submitted a
19 remedial letter for the Court's approval. Judge Farah and I
20 had a chance to review it. We had some very small edits for it
21 and provided it back to his counsel and those letters are now
22 being sent out and will be completed by noon on Friday with
23 daily reports by 5:00 p.m. each day on that progress.

24 And I wanted to also mention, I have received some
25 correspondence from citizens and otherwise am following along

1 the issue with respect to bone scans and their availability.
2 And I have learned from our earlier meeting that Mr. Shkolnik
3 and Mr. Napoli and their firm has a bone scan program, for lack
4 of a better word, already up and running in Flint and they have
5 made additional time available that other lawyers can use to
6 schedule their clients for bone scans. And that's from 11:00
7 a.m. on each Sunday until 4:00 p.m. on Sundays. And there's an
8 online scheduling platform for this opportunity, if people want
9 to either get a bone scan or have a minor scanned.

10 And in order to make that known more widely than just
11 to those represented by a lawyer, we're going to ask the Archer
12 Company that's handling the mailing and registration process to
13 post the link on their website. So anyone going to get further
14 information from Archer would be able to see that link. So I
15 just want to reiterate that that's a step, absolutely excellent
16 step in the right direction of making this available to others
17 and the online scheduling process will also be more widely
18 known very soon. But in the short run, all of the lawyers here
19 on the call or observing this know that they can use that
20 process to schedule their clients.

21 Another issue I wanted to bring up is that I am
22 currently reviewing the underwriters' motion to dismiss and the
23 response and so on. It's fully briefed. And shortly I'll be
24 able to figure out whether I would benefit from an oral
25 argument on it and if so, then we will schedule it. So I just

1 want you to know I haven't lost track of that. I also have the
2 EPA's motion for interlocutory appeal sitting on my desk inside
3 the computer and I have been looking at it and will do my best
4 to turn to that as well.

5 Before I go over additional dates that have been set
6 aside for future hearings, Judge Farah, is there anything that
7 you want to bring to everyone's attention?

8 JUDGE FARAH: No. Other than we owe some of you a
9 decision. It's being typed. It's being worked on. We're
10 hoping to have it out this Friday. And that should resolve,
11 for the time being at least, the AG's request for
12 reconsideration of Judge Yuille's order that he entered about
13 quite some time ago now. But the opinion is getting near done.
14 Hope to have it out to you by Friday. If not, it'll be out to
15 you by Monday.

16 And that should be -- now, this is certainly not an
17 invitation. But I'm looking at my board and I don't have
18 anymore water motions on my board and let's hope we can keep it
19 that way. But in any event, the courtroom is always open to
20 you. And if it's not, then I'll be happy to send you to Judge
21 Levy.

22 JUDGE LEVY: Yeah. Well, I'll send you some of my
23 motions.

24 JUDGE FARAH: All right.

25 JUDGE LEVY: That seems fair. Your new intern Emily

1 can start working on them.

2 JUDGE FARAH: Don't send too many. She'll quit before
3 she starts.

4 JUDGE LEVY: Let me also mention, Judge Farah, while
5 you were speaking it occurred to me that you and I had a chance
6 to meet and discuss the appointment of the Master Guardian ad
7 Litem for the settlement process. And it was agreed upon to
8 recommend that Miriam Wolock, who served sort of as a temporary
9 GAL to assist me in reviewing the portion of the MSA related to
10 minors. So it was agreed that she would be an ideal candidate
11 for that position and she was very interested and engaged with
12 the case and had read -- obviously, read the MSA very
13 carefully, but is looking forward to that appointment.

14 JUDGE FARAH: She seems very excited about it. She's
15 going to be great. We're all benefiting by having her.

16 JUDGE LEVY: Yeah. I think so.

17 The only other thing I have is I have set aside time
18 on March 10th and March 24th at two o'clock, if there are
19 discovery disputes that need to be addressed. And our next
20 regular status conference would be April 7th. All of these on
21 Wednesdays, also at two o'clock.

22 I was available on March 31st, but it turns out
23 there's a deposition that day and I don't want to mess with the
24 deposition schedule. And right now I think we're staying on
25 top of the issues that have come up.

1 So that will conclude what I have on the agenda,
2 unless I have missed something.

3 MR. MONROE: Judge, this is Stephen Monroe for the
4 Washington plaintiffs. May I be heard on a topic?

5 JUDGE LEVY: What is the topic?

6 MR. MONROE: This falls within the upcoming deadlines
7 on the agenda. I just want to address the 90-day deadline to
8 complete the scans that is in the grid.

9 JUDGE LEVY: Uh-huh?

10 MR. MONROE: The upcoming April 21st deadline to
11 complete bone scans. And there's a concern from my end and
12 from others that the limited availability of scans makes that
13 deadline pretty impractical for a large number of adults and
14 children. So I was wondering how best to address that concern.
15 I'm happy to bring a motion, but I wanted to bring that up
16 now.

17 JUDGE LEVY: Yeah. Well, you know, I was interested
18 in knowing how many slots are available in the 11:00 a.m. to
19 4:00 p.m. time frame.

20 I think Mr. Lanciotti was going to look into that, if
21 he could. Do you know --

22 MR. CUKER: Your Honor -- I'm sorry. It's Mark Cuker.
23 I'm looking at the website right now. There's no 11:00 a.m.
24 slot. The slots start at 1:00 p.m. to 3:45 and there's --

25 MS. GREENSPAN: Your Honor, can I clarify?

1 JUDGE LEVY: Yes, certainly.

2 MS. GREENSPAN: Okay. It started out with a 1:00 p.m.
3 to 4:00 p.m. schedule as the initial starting point, and it
4 will be expanded. If the schedule fills up, then they're going
5 expand the numbers of slots. It didn't fill up, you know, in
6 the first day. So there was only one day and there wasn't very
7 much notice of it. So that's understandable. So it's 32 scans
8 in a four-hour period. It can be expanded to a hundred a day.

9 JUDGE LEVY: Oh, terrific.

10 So, Mr. Monroe, what I would urge you to do is see how
11 many of your clients you can get in. How many clients do you
12 have?

13 MR. MONROE: We have -- currently, we're preparing to
14 register over a thousand this week. We have over 5,000 on the
15 census. My concern is that for a large majority of our clients
16 the scan might be the only way to prove any kind of damages on
17 the grid.

18 JUDGE LEVY: Okay. Mr. Monroe, we're all aware of how
19 the grid works. So thank you for updating everybody on that.
20 And so what I urge you to do is get started signing them up.

21 There is an effort underway to expand to another bone
22 scan -- additional bone scanning. So let's see how it goes. I
23 think it's too early to say that we need more time. If it
24 comes to that, the demand is there. Certainly you could
25 contact all of the settling lawyers, see if they would agree to

1 that, and then proceed from there if they don't with -- by
2 contacting co-liaison counsel for individuals and asking them
3 to submit such a motion.

4 MR. MONROE: Certainly, Judge. Thank you for your
5 time and guidance.

6 JUDGE LEVY: Sure. Thank you.

7 Okay. Well, I think that that will conclude the
8 hearing today. I just encourage everybody to get on as many
9 lists to get vaccinated. I'm considering it my own personal
10 duty to use the word "vaccine" every hour that I'm on the
11 record with anyone because there's just so much misinformation
12 about it. So I've got a one-person campaign to encourage
13 everybody. Especially the criminal defendants on my docket.
14 They're not here today, but I talk to them all day about it.

15 So I hope that everybody's making progress as much as
16 you can in your county with that, and I will see you all,
17 potentially, on March 10th and the 24th, but certainly on April
18 7th.

19 So stay safe, everybody.

20 And good to see you, Judge Farah.

21 JUDGE FARAH: Thank you, Your Honor.

22 JUDGE LEVY: Great. Okay.

23 (At 2:41 p.m., matter concluded.)

24 - - -

25

C E R T I F I C A T E

I, Darlene K. May, Official Court Reporter for the United States District Court, Eastern District of Michigan, do hereby certify that the foregoing is a true and correct transcript, to the best of my ability, from the record of proceedings in the above-entitled matter. I further certify that the transcript fees and format comply with those prescribed by the Court and the Judicial Conference of the United States.

February 28, 2021
Date

/s/ Darlene K. May
Darlene K. May, CSR, RPR, CRR, RMR
Federal Official Court Reporter
Michigan License No. 6479

Exhibit “B”

1 IN THE UNITED STATES DISTRICT COURT.

2 FOR THE EASTERN DISTRICT OF MICHIGAN
3 SOUTHERN DIVISION

4 In Re: FLINT WATER CASES Case No. 16-10444
5 _____/

6
7 SETTLEMENT COUNSEL MEETING
8 BEFORE THE HONORABLE JUDITH E. LEVY
9 UNITED STATES DISTRICT JUDGE
10 and
11 THE HONORABLE JOSEPH J. FARAH
12 GENESEE COUNTY CIRCUIT COURT JUDGE
13 Virtual Hearing Via Zoom - Monday, March 1, 2021

14 APPEARANCES IN ALPHABETICAL ORDER:

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23 ALSO PRESENT: Emily Donnellon

24 REPORTED BY: Darlene K. May, CSR, RPR, CRR, RMR
25 (313) 234-2605

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1 Monday, March 1, 2021

2 6:07 p.m.

3 -- --- --

4 JUDGE LEVY: Okay. Why don't we get started with
5 calling the case and I think maybe Eva or Casey, one of my law
6 clerks will do that for us.

7 Or I'll do it.

8 THE CLERK OF THE COURT: (Audio muted.)

9 JUDGE LEVY: Hearing no one. Well, calling the Flint
10 Water cases and this relates to the settlement process that's
11 underway.

12 Could I have appearances for plaintiffs?

13 MR. SHKOLNIK: Hunter Shkolnik for liaison counsel,
14 Your Honor.

15 MR. LEOPOLD: Ted Leopold, Your Honor, for co-lead
16 class counsel.

17 JUDGE LEVY: Thank you.

18 MR. WALKER: Renner Walker for the liaison counsel as
19 well, Your Honor.

20 MR. NAPOLI: Paul Napoli for liaison counsel.

21 MR. LANCIOTTI: Patrick Lanciotti for liaison.

22 JUDGE LEVY: Okay. Then ...

23 MR. NOVAK: Paul Novak also for class counsel.

24 JUDGE LEVY: Okay. Thank you.

25 MR. MORRISSEY: Steve Morrissey for the class

1 plaintiffs.

2 JUDGE LEVY: Okay. Thank you.

3 MS. BEREZOFSKY: Esther Berezofsky for class
4 plaintiffs.

5 JUDGE LEVY: Thank you.

6 All right. Well, then let's go to State of Michigan.

7 MR. KUHL: Good evening, Your Honor. This is Richard
8 Kuhl for the State defendants.

9 MS. BETTENHAUSEN: Margaret Bettenhausen also for the
10 State defendants.

11 MR. MENDEL: Todd Mendel for Governor Whitmer.

12 JUDGE LEVY: Okay.

13 MR. DRIKER: Eugene Driker for Governor Whitmer.

14 JUDGE LEVY: Thank you.

15 City of Flint?

16 MR. BERG: Rick Berg for the City.

17 JUDGE LEVY: Thank you.

18 MR. KIM: William Kim for the City, Your Honor.

19 JUDGE LEVY: Okay. And Mr. Klein is muted. But
20 Sheldon Klein for the City of Flint.

21 And we've got Mr. Thompson.

22 MR. THOMPSON: Yes, Your Honor. Craig Thompson for
23 Defendant Rowe.

24 JUDGE LEVY: Okay. Ms. Smith.

25 MS. SMITH: Susan Smith for McLaren Regional Medical

1 Center.

2 JUDGE LEVY: Okay. Have I missed anybody?

3 MR. WALKER: Just one update, Your Honor. I think
4 Mr. Stern got kicked off the call again. He's going to try to
5 rejoin. He said he'd give me a heads-up when he joins.

6 JUDGE LEVY: Okay. And we're joined, of course, by
7 Judge Farah from Genesee County Circuit Court and Deborah
8 Greenspan, who is the Special Master in the case.

9 And the purpose of the meeting is that earlier today I
10 learned that a motion would be filed related to the settlement
11 and it was my intention to try to schedule a status conference,
12 a conversation and opportunity to talk before that motion was
13 filed and that -- I was unable to accomplish that. The motion
14 was filed early this afternoon and our opportunity to meet
15 together could not be held until now, which is 6:00 p.m.

16 So what I'd like to do is indicate that, first of all,
17 this is not an oral argument on the motion.

18 This is not an oral argument on the motion. It was
19 filed. There's, obviously, no response; reply. This is not an
20 oral argument.

21 So what I'd like to do now is go off the record. We
22 will be discussing case management, the processes connected to
23 this motion and what is to follow from its filing. And once
24 we've had this discussion, we can go back on the record with
25 any amount of this material that you think we should put on the

1 record, if any.

2 So Darlene with that, we'll give you a break.

3 (At 6:11 p.m., off the record.)

4 (At 6:37 p.m., court resumes.)

5 JUDGE LEVY: Well, we're back on the record in our
6 status conference. And Judge Farah and I had an opportunity to
7 provide feedback to the counsel who filed the class plaintiff's
8 motion for immediate suspension of the use of the portable bone
9 scanning. And it was determined -- well, I set forth that the
10 motion must be withdrawn as noncompliant with the Court's
11 practice guidelines as well as the duties of the counsel.

12 So that is the upshot of our discussion today. And
13 believe it or not, I'm looking forward to whatever is next in
14 the case. And I do want to mention that I think Judge Farah is
15 awaiting a motion to have Miriam Wolock appointed.

16 JUDGE FARAH: Yes.

17 JUDGE LEVY: So the sooner that happens, the better.
18 Because I think she's already trying to get to work on the
19 issue of foster children.

20 MR. STERN: Yes. Your Honor, this is Corey Stern. I
21 will have that filed tomorrow morning.

22 JUDGE LEVY: Okay. And then there's also, apparently,
23 a motion that Ms. Greenspan met with me and Judge Farah about
24 this afternoon related to those foster children and perhaps
25 getting information and data. I learned in a soul-crushing,

1 heartbreaking moment that there are 800 such children in Flint.
2 So I think everybody needs to be working promptly to see what
3 we can do to make sure they have an opportunity to participate.
4 So somebody's working ...

5 Is that you, Mr. Kuhl?

6 MR. KUHL: Yes, Your Honor. We'll be working on it
7 and we'll get it in as soon as possible.

8 JUDGE LEVY: Okay. That will be great. Because I
9 just don't want to see any of these deadlines go by with people
10 not having the information they need and not being able to
11 participate.

12 So is there anything else?

13 MR. SHKOLNIK: Nothing from the liaison counsel, thank
14 you.

15 MR. LEOPOLD: Nothing from plaintiffs, Your Honor.
16 Thank you for your time. I do appreciate it.

17 JUDGE LEVY: Sure.

18 JUDGE FARAH: Thank you, counselors.

19 MR. LEOPOLD: And Judge Farah you as well.

20 JUDGE LEVY: Yeah.

21 All right. And, thanks, Darlene.

22 And my law clerks.

23 Also, my intern Solomon was with us. Maybe he had to
24 leave for a class.

25 JUDGE FARAH: And my intern, Emily, went home and got

1 on the computer, right away. So thanks to Emily.

2 JUDGE LEVY: Good. Okay. Well, thank you very much.
3 And I'll look forward to those motions and I know Judge Farah
4 is as well.

5 JUDGE FARAH: Thank you, Judge Levy.

6 JUDGE LEVY: Thank you. Bye.

7 (At 6:40 p.m., matter concluded.)

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C E R T I F I C A T E

I, Darlene K. May, Official Court Reporter for the United States District Court, Eastern District of Michigan, do hereby certify that the foregoing is a true and correct transcript, to the best of my ability, from the record of proceedings in the above-entitled matter. I further certify that the transcript fees and format comply with those prescribed by the Court and the Judicial Conference of the United States.

March 2, 2021
Date

/s/ Darlene K. May
Darlene K. May, CSR, RPR, CRR, RMR
Federal Official Court Reporter
Michigan License No. 6479

Exhibit “C”

FILED UNDER SEAL

Exhibit “D”

From: Holmes, Meghan R. meghan.holmes@thermofisher.com 
Subject: RE: March 4, 2021 Letter to Judge Levy
Date: March 15, 2021 at 5:17 PM
To: Valdemar Washington val@vlwlegal.com
Cc: Atty. Gladys L. Christopherson gladys@vlwlegal.com, Trina L. Stroope trina@vlwlegal.com

MH

Hello Attorney Washington,

As previously represented to Attorney Leopold, Thermo Fisher's XRF analyzers are not FDA-approved for *in vivo* diagnostic purposes, nor have we sought FDA approval for this use. The predominant use of Thermo Fisher's XRF analyzers is in industrial applications. Thermo Fisher has occasionally sold XRF analyzers to academic institutions for research use. To our knowledge, in each instance where that research use entailed *in vivo* measurement of lead in bone, it is our understanding that the customer's Internal Review Board (IRB) had approved such research use. We are aware that there have been limited occasions on which researchers have consulted with Thermo Fisher about customization of the XRF, but in all such cases of which we are aware, those consultations were in a research context and subject to an IRB.

Regards,

Meghan R. Holmes
 Associate General Counsel - Litigation

Thermo Fisher Scientific Inc.
 168 Third Avenue | Waltham, MA 02451
 Tel: +1 (781) 622-1282 | Fax: +1 (781) 622-1338
Meghan.holmes@thermofisher.com | www.thermofisher.com

From: Valdemar Washington <val@vlwlegal.com>
Sent: Friday, March 5, 2021 1:55 PM
To: Holmes, Meghan R. <meghan.holmes@thermofisher.com>
Cc: Atty. Gladys L. Christopherson <gladys@vlwlegal.com>; Trina L. Stroope <trina@vlwlegal.com>
Subject: March 4, 2021 Letter to Judge Levy

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Ms. Holmes,


Attached is a Notice from Judge Levy and Exhibit A which mention your company's Analyzer. Will you provide me with confirmation that your company has authorized Dr. Specht to make modifications of your analyzer for use on human test subjects as described in the March 4, 2021 letter to the Judge? Thank you for your courtesies in this regard.

Val Washington

Valdemar L. Washington | Attorney at Law
Valdemar L. Washington, PLLC



 [\(810\) 407-6868](tel:(810)407-6868)
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Date: March 8, 2021 at 4:02 PM
To: Marc Bern mbern@bernilp.com, Darryl Segars segarslaw@hotmail.com, Atty. Mark Cuker mcuker@wcblegal.com



Begin forwarded message:

From: Valdemar Washington <val@vlwlegal.com>
Subject: March 4, 2021 Letter to Judge Levy
Date: March 5, 2021 at 1:55:03 PM EST
To: Meghan.holmes@thermofisher.com
Cc: "Atty. Gladys L. Christopherson" <gladys@vlwlegal.com>, "Trina L. Stroope" <trina@vlwlegal.com>

Ms. Holmes,

Attached is a Notice from Judge Levy and Exhibit A which mention your company's Analyzer. Will you provide me with confirmation that your company has authorized Dr. Specht to make modifications of your analyzer for use on human test subjects as described in the March 4, 2021 letter to the Judge? Thank you for your courtesies in this regard.

Val Washington



Exhibit A.pdf



Notice
Regard...nts.pdf

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